

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION

_____)	
IN RE:)	
)	
BRYAN GORMAN,)	CHAPTER 7
)	
Debtor.)	
_____)	CASE NO. 23-40248

**MOTION of BENSON LUMBER AND HARDWARE, INC. FOR RELIEF FROM
THE AUTOMATIC STAY TO PURSUE CLAIMS AGAINST NON-DEBTOR
THIRD PARTY**

Benson Lumber and Hardware, Inc. (“Benson”), a creditor of the Debtor, files this Motion seeking relief from the automatic stay under 11 U.S.C. Section 362(d)(1) for cause for the limited purpose of pursuing claims against Michael J. McFadden, Esq. (“Attorney Fadden”) in a civil action presently pending in Middlesex Superior Court at Civil Action Number 2381 CV 00140 (the “Civil Action”)¹. In accordance with Local Bankruptcy Rule 9013-1(b), counsel for Benson contacted the Chapter 7 Trustees for Frank Gorman (Janice Marsh), Bryan Gorman (Joseph Baldiga) and Zaana-17 LLC (Steven Weiss), and Debtors’ counsel (Marques Lipton), all of whom have indicated that they do not object to the relief requested in this Motion. In support of this request, Benson states as follows:

1. Benson Lumber and Hardware, Inc. (“Benson”) is a New Hampshire corporation with a principal office located at 6 Martin Street, Derry, New Hampshire

¹ The case caption is *Benson Lumber and Hardware, Inc. vs. Southern End Realty, LLC, Frank Gorman, Bryan P. Gorman, and Michael J. Fadden, Esq., d/b/a Attorney Michael J. Fadden P.C.* On March 3, 2023, Attorney Fadden filed a Motion to Dismiss and Benson filed an Opposition on March 17, 2023. There has been no decision on the matter. On April 19, 2023, Benson filed a Request for Default Judgment solely against Southern End Realty, LLC.

03038.

2. Benson Lumber is engaged in the business of providing lumber and construction materials and services. Benson provided goods and services to Southern End Realty, LLC (“SER”) in accordance with the terms of a Non-Consumer Credit Agreement dated January 17, 2011. The Debtor personally and unconditionally guaranteed the obligations of SER.

3. SER failed to pay for goods and services provided by Benson and Benson agreed to forbear from collection in exchange for a promissory note, personal guaranties and security agreements from the Defendant’s in the Civil Action, all of which were drafted by Attorney Fadden.

4. SER failed to make payments as required by the forbearance agreement and on January 17, 2023, Benson filed the Civil Action to pursue collection.

5. The Civil Action includes a Count for “Aiding and Abetting Fraud” against Attorney Fadden wherein Benson asserts that Attorney Fadden drafted and submitted documents for signature, and subsequently recorded them in the Registry of Deeds, knowing that those documents contained affirmative misrepresentations as to the title of real estate securing defendants’ obligations under the forbearance agreements.

6. Benson seeks relief from the automatic stay for cause under 11 U.S.C Section 362(d)(1) so that it may continue to pursue its Aiding and Abetting Count in the pending Civil Action solely against Attorney Fadden.

7. Benson acknowledges and agrees that anything that transpires in connection with Benson’s pursuit of its’ claim against Attorney Fadden will have no effect whatsoever on Benson’s claims against the Debtor in this bankruptcy proceeding.

8. Benson submits that relief if appropriate under Section 362(d)(1) for the following reasons”

- a. the requested relief will have no impact on the bankruptcy estate because the relief requested will only provide Benson with the ability for recovery from Attorney Fadden and not from any assets of the bankruptcy estate.
- b. the requested relief will have minimal impact on the Debtor, who may be required to provide testimony and documentary evidence relevant to the cause of action against Attorney Fadden.

WHEREFORE, Benson Lumber requests that the Court grant relief from the automatic stay to Benson so that it may pursue its’ pending claims against Attorney Fadden, together with such other and further relief as the Court deems just and proper

Respectfully submitted
Benson Lumber & Hardware, Inc.,
by its counsel,
/s/ Donald R. Lassman
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CERTIFICATE OF SERVICE

I, Donald R. Lassman, hereby certify that on April 25, 2023, a copy of the foregoing Limited Objection was served on the parties whose names appear below via ECF, unless otherwise indicated.

- **Joseph H. Baldiga** jbaldiga@mirickoconnell.com, jhbaldiga@ecf.axosfs.com, bankrupt@mirickoconnell.com
- **Edmond J. Ford** eford@fordlaw.com
- **Richard King** USTPRegion01.WO.ECF@USDOJ.GOV
- **Marques C Lipton** marques@liptonlg.com, mlipton@ecf.courtdrive.com
- **George C. Malonis** gcmpc@aol.com
- **Steven Weiss** sweiss@ssfpc.com, astephan@ssfpc.com

/s/ Donald R. Lassman
Donald R. Lassman

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ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY

This matter having come before the Court on the Motion for Relief from Automatic Stay (the “Lift Stay Motion”) filed by Benson Lumber and Hardware, Inc. (“Benson”) seeking relief from the automatic stay for the limited purpose of pursuing claims against Michael J. McFadden, Esq. (“Attorney Fadden”) in a civil action presently pending in Middlesex Superior Court at Civil Action Number 2381 CV 00140 (the “Civil Action”), there being no opposition filed to the Lift Stay Motion, and Benson agreeing that anything that transpires in connection with Benson’s pursuit of its’ claim against Attorney Fadden will have no effect whatsoever on Benson’s claims against the Debtor in this bankruptcy proceeding;

IT IS HEREBY ORDERED THAT:

The Lift Stay Motion and the relief requested therein is hereby granted so that Benson may pursue its claims against Attorney Fadden in the Civil Action to conclusion.

DATED: _____, 2023

Christopher J. Panos,
United States Bankruptcy Court Judge